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APPENDIX A

OPINION OF THE SUPREME COURT OF OHIO

Queensgate Investment Co., d.b.a. Holiday Inn,
Appellant,

v.

Liquor Control Commission, State of Ohio,
Appellee.

[Cite as Queensgate Investment Co. v. Liquor Control Comm. (1982), 69 Ohio St. 2d 361.]

(No. 81-633—Decided February 24, 1982.)

APPEAL from the Court of Appeals for Hamilton County.

Queensgate Investment Co., appellant, owns and operates a high-rise motel in downtown Cincinnati, Ohio, and is holder of Liquor Permit D-5A-6, 7137983-0005. The permit covers the entire premises of the motel, including a discotheque located on the top floor called "Lucy's in the Sky."

Appellee wrote and published a monthly newsletter entitled "Skywriting." The August 1978 edition of the newsletter contained two items which advertised drinks at special prices. Specifically, one item referred to "LUCY'S PERPETUAL NOTION — The Drink Exchange." The promotion would permit a customer of the restaurant to obtain a drink in the discotheque "for only 50¢," and then upon returning to the restaurant the next day receive

the same price: "[s]avor lunch in the dining room daily and you're rewarded not only with fine food, but you can get two drinks a day for only $1.00, 'cause SOMEBODY UP THERE LIKES YOU!' " (*Sic.*) The other item advertised a "COY BACON BEING TRADED PARTY" at which drinks would be sold for 79 cents.

The newsletter had been published for approximately one year and was distributed on the permit premises and was also mailed to members of appellant's club. The mailings occurred on the second Friday of each month.

The Ohio Liquor Control Commission, appellee, alleged that appellant committed three violations of Ohio Adm. Code 4301:1-1-44[1]: that appellant "did advertise the retail price of alcholic (sic) beverage in a circular off of permit

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[1] Ohio Adm. Code 4301:1-1-44 provides, in pertinent part:

"4301:1-1-44 Advertising

"No alcoholic beverages shall be advertised in Ohio except in the manner set forth in 4301:1-1-03 and as hereinafter provided.

"(A) As to advertising on the premises, holders of Class C, D, and G permits shall not advertise the price per bottle or drink of any alcoholic beverage, or in any manner refer to price or price advantage except within their premises and in a manner not visible from the outside of said premises.

"(B) Manufacturers and distributors of alcoholic beverages are permitted to advertise their products in Ohio.

"Holders of Class C, D, and G permits shall be authorized to advertise in newspapers of general circulation, radio and television, on billboards, calendars, in or on public conveyances and in regularly published magazines. Advertising may include the retail price of the original container or packages, but such advertising may not in any manner refer to price advantage.

"Subsequent enactment of law by the 102nd Ohio General Assembly prohibits the advertising of the retail price of beer in any media. See Page 6, Section 4301.211 of the Revised Code of Ohio."

premises," "did advertise a price advantage for alcoholic beverage in a circular off of permit premises," and "did advertise in a circular off of permit premises." All three violations were alleged to have occurred on August 14, 1978.

On November 29, 1978, a hearing was held before appellee. Appellee found appellant to be in violation of Ohio Adm. Code 4301:1-1-44 and, subsequently, imposed a seven-day suspension of appellant's liquor permit.

Appellant filed an appeal of the suspension order to the Court of Common Pleas of Hamilton County pursuant to R.C. 119.12, asserting that the order was not supported by reliable, probative, and substantial evidence, and was not in accordance with law. The Court of Common Pleas reversed and vacated appellee's order and entered judgment in favor of appellant. Upon appeal to the Court of Appeals, the trial court's judgment was reversed.

The cause is now before this court pursuant to the allowance of a motion to certify the record.

Strauss, Troy & Ruehlmann Co., L.P.A., Mr. Samuel M. Allen and *Ms. M. Michele Fleming,* for appellant.

Mr. William J. Brown, attorney general, and *Mr. James M. Sterner,* for appellee.

Per Curiam.

I.

Initially, appellant challenges Ohio Adm. Code 4301:1-1-44 on three grounds: (1) that the regulation is invalid because no authority for it has been delegated to appellee by the General Assembly; (2) that the regulation is not uniform and its application by appellee is arbitrary, capricious and unreasonable; and (3) the appellee's order

was not supported by reliable, probative or substantial evidence.

Turning to appellant's first argument, we find that the challenged regulation does not exceed the grant of authority conferred upon appellee by the General Assembly. Authority for the regulation may be found in R. C. 4301.-03:

> "The liquor control commission may adopt * * * rules * * * necessary to carry out Chapters 4301 and 4303 of the Revised Code * * *. The rules of the liquor control commission may include the following:
>
> "* * *
>
> "(E) Uniform rules and regulations governing *all advertising* with reference to the sale of beer and intoxicating liquor throughout the state and *advertising* upon and in the premises licensed for the sale of beer or intoxicating liquor * * *." (Emphasis added.)

Appellee's regulation clearly is consistent with the specific statutory provision. The section states that regulations may govern all advertising of the sale of beer and intoxicating liquor by permit holders; the challenged regulation goes directly to the issue of this case: advertising.

Appellant relies upon *Burger Brewing Co.* v. *Thomas* (1975), 42 Ohio St. 2d 377, to support the argument that no authority has been delegated to appellee to promulgate Ohio Adm. Code 4301:1-1-44. *Burger* held that "it is evident that the General Assembly has not specifically expressed an intention that the commission have authority in the area of *pricing* in the liquor industry * * *." *Id.*, at page 383. (Emphasis added.) *Burger*, therefore, addressed the issue of regulation of price, not regulation of advertising, and, as such, is distinguishable from the case *sub judice*.

Moreover, although *Burger, supra,* did hold, at page 385, that the silence of the General Assembly "in a regulatory area of such substantial importance and impact [pricing] is persuasive to us that no devolution of such power was intended," there is no such silence here. In the matter of advertising, R. C. 4301.03 (E) was enacted which grants a devolution of their authority over "all advertising." Furthermore, R. C. 4301.211[2] specifically prohibits the advertising of the retail price of beer and malt beverages, which prohibition does not conflict with the general grant of authority of R. C. 4301.03 (E).[3]

Appellant's second contention is that the regulation is not uniform and is being applied unreasonably and capriciously. We disagree. The regulation is on its face clear and unambiguous, in that it prohibits permit holders from advertising price per bottle or drink. It does permit advertising of the retail price of the original container or package but prohibits any reference to price advantage. We fail to discern the confusion suggested by appellant between advertisement of price per drink and price of the original container or package.

---

[2] R.C. 4301.211 provides:

> "No holder of a permit issued by the department of liquor control shall advertise the retail price of beer and malt beverages in any newspaper, circular, radio broadcast, television telecast or by any other media of advertising off the premises of the permit holders."

[3] The specific prohibition on beer advertising does not imply a limitation of regulation of other advertising of other alcoholic beverages unless there is a conflict between the general and specific statutes. *Thomas* v. *Evans* (1905), 73 Ohio St. 140. We find no such conflict. R. C. 4301.211 prohibits a specific advertising of a specific beverage; R. C. 4301.03(E) still permits appellee to regulate other advertising of other alcoholic beverages not provided for in R. C. 4301.211.

Appellant's third contention is that appellee's order was not supported by reliable, credible evidence. Specifically, appellant argues that appellee produced no evidence that the August 1978, newsletter was ever mailed. At the hearing before appellee, the following colloquy took place between the manager of the permit premises and an assistant attorney general:

"Q. Now, in the August monthly newsletter of Skywriting, did you have any mailings?
"A. Yes, we did.
"Q. Were the mailings an exact copy of * * * [Exhibit C]?
"A. It was the same newsletter.
"* * *
"Q. Are they always mailed on the second Friday of the month?
"A. Yes, sir."

This admission by appellant's employee provides an evidentiary basis for appellee's order.

II.

Appellant also argues that Ohio Adm. Code 4301:1-1-44 is an unconstitutional restraint on the exercise of First Amendment rights. For the following reasons, we disagree, and hold Ohio Adm. Code 4301:1-1-44 does not violate the First Amendment to the United States Constitution.

Commercial speech receives some constitutional protection under the First Amendment to the United States Constitution. *Bigelow* v. *Virginia* (1975), 421 U.S. 809. Commercial speech is not wholly outside of the protection of the First Amendment, even though the advertiser's interest may be purely economic; the free flow of commercial information is indispensable for the well-informed allocation of economic resources. *Virginia State Board of Pharm-*

acy v. *Virginia Citizens Consumer Council* (1976), 425 U.S. 748. Nonetheless, a regulation of commercial speech may be upheld as not violative of the First Amendment if it complies with the four-part test articulated in *Central Hudson Gas & Electric Corp.* v. *Public Service Commission of New York* (1980), 447 U.S. 557, at page 566:

> "In commercial speech cases, then, a four-part analysis has developed. At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest."

Applying the first half of the *Central Hudson* test to the case *sub judice,* we find that the commercial speech involved concerns a lawful activity, the sale of alcoholic beverages by a permit holder. The advertisement contained in appellant's newsletter set forth a price per drink under certain conditions. It was not misleading to the consumer.

We also find that the asserted governmental interest is substantial. Since the adoption of the Twenty-first Amendment to the United States Constitution in 1933, the states have had the power to regulate "the transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors." Such regulation may be directed toward a minimization of the evils associated with alcoholic beverages. In *Ziffrin* v. *Reeves* (1939), 308 U.S. 132, at pages 138-139, the court held that the state's power to prohibit absolutely

includes the lesser power to permit manufacture, sale, transportation or possession, subject to prescribed conditions which are not unreasonable and which subserve the policy of confining the liquor traffic in order to minimize its evils. See also, *Solomon* v. *Liquor Control Comm.* (1965), 4 Ohio St. 2d 31. The governmental interest in discouraging the excessive consumption of alcoholic beverages falls within the ambit of interests described by *Ziffrin*.

Since the first two parts of the *Central Hudson* test have been answered positively, it is necessary to examine whether the regulation directly advances the governmental interest in minimizing the evils of alcoholic beverages by discouraging excessive alcoholic consumption. The regulation is directed toward regulation of the intoxicants themselves, rather than speech. This is unlike the case, *e.g.*, in *Virginia Pharmacy, supra,* where the speech was the actual focus of the regulation, since the aim of the restriction was the prevention of competition in pharmaceutical sales, not the discouragement of pharmaceutical purchases.

Finally, we come to the inquiry whether the regulation is more extensive than is necessary to serve the enunciated governmental interest. We hold that it is not. The advertising of drink prices and price advantages would encourage and stimulate excessive consumption of alcoholic beverages; an advertising prohibition aids the interest in preventing that consumption. No less extensive a regulation would achieve the same purpose. Rather, in order to serve the same governmental interest, virtually any other regulation would be more extensive: *e.g.*, increased prices, shorter hours, or reduced number of permits, would all place a greater burden on the permit holder.

For the foregoing reasons, the judgment of the Court of Appeals is affirmed.

Judgment affirmed.

Celebrezze, C.J., W. Brown, Sweeney, Locher and Krupansky, JJ., concur.

Holmes, J., concurs in the judgment.

C. Brown, J., dissents.

APPENDIX B

ORDER OF THE SUPREME COURT OF OHIO

THE SUPREME COURT OF THE STATE OF OHIO
1982 TERM
To wit: February 24, 1982

No. 81-633

THE STATE OF OHIO,)
)
City of Columbus)

Queensgate Investment Co., d.b.a. Holiday Inn,

Appellant,

vs.

Liquor Control Commission, State of Ohio,

Appellee.

APPEAL FROM THE COURT OF APPEALS FOR HAMILTON COUNTY

This cause, here on appeal from the Court of Appeals for Hamilton County, was heard in the manner prescribed by law. On consideration thereof, the judgment of the Court of Appeals is affirmed for the reasons set forth in the opinion rendered herein, and it appearing that there were reasonable grounds for this appeal, it is ordered that no penalty be assessed herein.

It is further ordered that the appellee recover from the appellant its costs herein expended; and that a mandate be sent to the COMMON PLEAS COURT to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for HAMILTON County for entry.

[CERTIFICATION OMITTED]

APPENDIX C

JOURNAL ENTRY OF THE COURT OF APPEALS FOR HAMILTON COUNTY, OHIO OVERRULING APPLICATION FOR RECONSIDERATION

COURT OF APPEALS
FIRST APPELLATE DISTRICT
HAMILTON COUNTY, OHIO

NO. C-790901

QUEENSGATE INVESTMENT CO.,
d.b.a. HOLIDAY INN,
Appellant-Appellee,

vs.

LIQUOR CONTROL COMMISSION,
STATE OF OHIO,
Appellee-Appellant.

ENTRY OVERRULING APPLICATION FOR RECONSIDERATION

(Filed March 24, 1981)

This cause came on to be considered upon the application of the appellee for reconsideration of this Court's Decision and judgment entered herein on February 25, 1981, and

The Court being fully advised in the premises finds that said application is not well taken and that the same ought to be and hereby is overruled.

APPENDIX D

OPINION OF THE COURT OF APPEALS FOR HAMILTON COUNTY, OHIO

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

NO. C-790901

QUEENSGATE INVESTMENT COMPANY,
d.b.a HOLIDAY INN,
Appellant-Appellee,

vs.

LIQUOR CONTROL COMMISSION,
Appellee-Appellant.

DECISION
(Filed February 25, 1981)

Mr. Samuel M. Allen, 1800 First National Bank Building, Cincinnati, Ohio 45202, for Appellant-Appellee,

Messrs. William J. Brown and James M. Sterner, 2323 West Fifth Avenue, Columbus, Ohio 43204, for Appellee-Appellant.

PER CURIAM.

This cause came on to be heard upon the appeal, the transcript of the docket, journal entries and original papers from the Court of Common Pleas of Hamilton County,

Ohio, the transcript of the proceedings and the briefs of counsel, oral arguments having been waived.

Now, therefore, the assignment of error having been fully considered is accordingly passed upon in conformity with App. R. 12 (A) as follows:

The appellant, the Liquor Control Commission of the State of Ohio (Commission), appeals from the judgment of the Court of Common Pleas reversing a finding of the Commission that the appellee, a permit holder, was guilty of three violations of state regulations and the consequent imposition of a seven-day suspension. Appellee owns and operates a high-rise motel in downtown Cincinnati, and the liquor permit covers the entire premises, including the restaurant, lobby, hallways, rooms, and the discotheque on the top floor called "Lucy's in the Sky." The facts surrounding the incident for which the permit holder's license was suspended are not in dispute. Thus, at the hearing before the Commission, evidence was adduced to the effect that an investigator of the Commission visited the appellee's premises during regular business hours to inquire into the circumstances of a monthly newsletter entitled "Skywriting," written and published by the permit holder. A particular edition of this newsletter, for the month of August, 1978, was the subject of the instant investigation, since it contained several items which advertised drinks at special prices.[1] In a discussion with the

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[1] One item referred to "Lucy's Perpetual Notion — The Drink Exchange," which advertised a promotion by the permit holder which would permit a customer of the restaurant to obtain a drink in the discotheque "for only 50¢," and then upon returning to the restaurant the next day receive the same price. The item closed: "Savor lunch in the dining room daily and you're rewarded, not only with fine food, but you can get two drinks a day for only $1.00, 'cause SOMEBODY UP THERE LIKES YOU!"

The second item advertised a "COY BACON BEING TRADED

manager of the premises, the investigator learned that copies of this particular edition of the newsletter, as well as similar editions during the previous twelve months or so, were mailed off the premises to select customers of the discotheque. While it was admitted that the particular issue had not yet been mailed, the manager informed the investigator that the newsletter was generally distributed throughout the hotel rooms, lobby and restaurant on the 1st of each month and mailed to members of the club on the second Friday of each month. Based upon this information, the Commission issued a notice to the appellee to appear before the Commission for the purposes of defending against alleged violations of the state liquor regulations, which prohibit advertising in a circular off the premises retail prices and price advantages.

At the hearing before the Commission, the manager of the permit premises and the Assistant Attorney General engaged in the following colloquy on the subject of the distribution of the monthly newsletter:

> Q. Mr. Ruby, how long have you been publishing this newsletter, Skywriting?
>
> A. Approximately a year.
>
> Q. During that entire year, is the only method of distribution of Lucy's monthly newsletter, *i.e.*, Skywriting, at the discotheque at the permit premises and on the first floor?
>
> A. No, sir.
>
> Q. What is their other method of distribution?
>
> A. They have also been mailed to members of the club that belong to Lucy's.
>
> • • •

PARTY," a promotion in celebration of a local professional athlete, at which drinks would be sold for 79¢, his old jersey number. (T.d. 3, Exh. C).

Q. Now, in the August monthly newsletter of Skywriting, did you have any mailings?
A. Yes, we did.
Q. Were the mailings an exact copy of [Exhibit C]?
A. It was the same newsletter.

• • •

Q. Are they always mailed on the second Friday of the month?
A. Yes, sir.

Based upon this testimony and the physical evidence introduced at the hearing, the Commission found the permit holder to be in violation of its regulations and, subsequently, imposed a seven-day suspension. Appellees then filed an appeal from this suspension order to the Court of Common Pleas under R.C. 119.12, asserting that the order was not supported by reliable, probative and substantial evidence and was otherwise not in accordance with law. Following the submission of memoranda and oral argument from both sides, the court, acting as an appellate tribunal for these purposes, reversed the finding of the Commission and vacated the suspension order. It is from this judgment that the appellant raises this appeal, assigning as error the single contention that the court erred in reversing the Commission's finding and suspension order.

The threshold issue in this appeal is whether the Commission has the right to appeal the judgment of the lower court. Under R.C. 119.12, appeals from administrative decisions rendered by the Courts of Common Pleas are limited to questions of law relating to the constitutionality, construction, or interpretation of statutes or rules and regulations of the agency. Only when an appeal has been perfected on these grounds may this Court then review and determine the correctness of the lower court's judgment that the Commission's order is not supported by any re-

liable, probative and substantial evidence in the record. *Katz* v. *Department of Liquor Control* (1959), 166 Ohio St. 299, 141 N.E.2d 294. Thus, where the Court of Common Pleas concludes that the Commission did not have before it sufficient evidence of a permit holder's infraction and accordingly reverses an order of that agency, the Commission is precluded from raising solely the question of fact on appeal to this Court. *Katz, supra; Mentor Marinas, Inc.* v. *Board of Liquor Control* (10th Dist. 1964), 1 Ohio App. 2d 219, 204 N.E.2d 404.

However, where the judgment entry of the Court of Common Pleas is ambiguous, such as here where the court simply stated that ". . . the order of the Commission finding Appellant in violation of the aforesaid regulation and imposing a suspension on the appellant's liquor permit is not supported by reliable, probative and substantial evidence and is not in accordance with law" (T.d. 7), it becomes necessary for this Court, in the interests of justice, to examine the entire journal entry and proceedings below to ascertain upon which ground the judgment was founded. *A. B. Jac., Inc.* v. *Liquor Control Commission* (1972), 29 Ohio St. 2d 139, 280 N.E.2d 371. For example, in *Rrawu* v. *Liquor Control Commission* (1978), 46 Ohio St. 436, 349 N.E.2d 304, the court was presented with a fact situation markedly similar to the instant appeal in that the judgment entry of the Court of Common Pleas contained nothing to indicate that its reversal of the Commission's order was based upon a question of law. Nevertheless, a review of the entire record before the lower court made it apparent that since the conduct alleged to have violated the regulation had been stipulated, the court's finding necessarily had to involve its interpretation and application of the relevant regulation — a question of law. *Id.* at 441, 349 N.E.2d at 308. See, also *In re Mitchell* (1979), 60

Ohio St. 2d 85, 397 N.E.2d 764; *A. B. Jac., supra.* Thus, having perfected an appeal on a question of law, the Commission could then present and argue the issue of whether there was sufficient evidence to support its factual determination.

Applying these guidelines to the instant case, we find that while the court's judgment entry does not indicate that its reversal was predicated upon a question of law, the record of the proceedings below is replete with issues and arguments concerning the constitutionality, construction and interpretation of the relevant enabling legislation of the Commission and the particular regulation adopted pursuant thereto. The permit holder not only argued that there was a failure of proof before the Commission, but further asserted that the Commission had failed to adequately define the terms "advertising" and "price advantage," that this prohibitive regulation was not "uniform" and therefore contrary to R.C. 4301.03 (E), and that the offending newsletter did not fall within the types of advertising prohibited by the regulation. (T.d. 5.) Consequently, the Commission defended on each ground. (T.d. 6.) The court also had before it the transcript of the hearing before the Commission wherein the manager of the permit premises admitted engaging in the conduct which the Commission held to be violative of the regulations – an admission which for our purposes must be held to be the functional equivalent of the stipulation found in *Rrawu, supra,* and *A. B. Jac., supra.* Having undisputed facts before it the remaining issues before the court could only have been questions of law dealing with the constitutionality, construction and interpretation of the regulation. Thus, we conclude that the Commission's appeal from the judgment of the Court of Common Pleas, despite the perfunctory nature of the entry, presents a ques-

tion of law for our review and determination. Moreover, once having perfected an appeal on this basis, this Court has jurisdiction to review the ancillary claim of the Commission that its determination and order of suspension was, in fact, supported by sufficient probative evidence. Appellee's contention that the Commission has failed to raise an appealable issue is, therefore, without merit.

Having thus decided, we next direct our attention to the factual and legal issues surrounding the suspension order. The Commission contends, contrary to appellee's arguments below, that the regulations are constitutional, are not vague, arbitrary, capricious or otherwise unreasonable, that the appellee, by its own admission, engaged in conduct which falls squarely within the proscriptions of the regulations, and that the court therefore erred in vacating the Commission's order. For the reasons stated below, we agree with the Commission and accordingly sustain the instant assignment of error.

Regulation 4301:1-1-44 of the Liquor Control Commission provides, in pertinent part:

> As to advertising on the premises, holders of Class C, D, and G permits shall not advertise the price per bottle or drink of any alcoholic beverage, or in any manner refer to price or price advantage except within their premises and in a manner not visible from the outside of said premises.
>
> • • •
>
> Holders of Class C, D and G permits shall be authorized to advertise in newspapers of general circulation, radio and television, on billboards, calendars, in or on public conveyances and in regularly published magazines. Advertising may include the retail price of the original container or packages, but such advertising may not in any manner refer to price advantage.

This regulation, on its face, is clear and unambiguous. It prohibits advertising either the price of drinks or price advantage off the premises, the latter concept of price advantage including both advantage compared with prices of competitors, and compared to its own normal prices. Thus, the language contained in the newsletter (see footnote 1) which was admittedly distributed off the premises, constituted violations of this regulation by advertising both price per drink and price advantages. We find no merit in appellee's contention that this regulation on its face, and as applied to its conduct, represents a capricious and arbitrary exercise of governmental authority. See *Ziffrin* v. *Reeves* (1939), 308 U.S. 132; *Solomon* v. *Liquor Control Commission* (1965), 4 Ohio St. 2d 31, 212 N.E.2d 595; *Board of Liquor Control* v. *Tsantles* (1952), 156 Ohio St. 512, 103 N.E.2d 749; *State ex rel. Zugraves* v. *O'Brien* (1935), 130 Ohio St. 23, 196 N.E.2d 664.

The only remaining issue raised by appellee below, and here, is whether the regulation, as applied to the appellee, violates the guarantee of free speech under the First and Fourteenth Amendments, by unreasonably infringing upon the permit holder's right to engage in protected speech. Appellee contends that purely commercial speech, as here, enjoys the protection of the First Amendment, *Virginia State Bd. of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.* (1976), 425 U.S. 748; *Linmark Assocs., Inc.* v. *Willingboro* (1977), 431 U.S. 85, and that governmental regulations which incidentally infringe upon this right are valid only if the state can demonstrate that its regulation bears a substantial relation to a legitimate governmental interest. While we agree with the appellee that this represents a correct statement of the relevant law, *Norton Advertising* v. *Arlington Heights*, C-790794 (1st Dist. Feb. 11, 1981), we are not persuaded that the subject regulations

represent unreasonable restraints on commercial speech. It is well-established that states are empowered to enact and enforce strict regulations concerning the manufacture, sale, transportation and disposition of alcoholic beverages which are reasonable and which serve the underlying policy of minimizing the substantive evils associated with alcoholic beverages. *E.g., Ziffrin, supra; Solomon, supra.* In reviewing the application of this regulation to the advertising of permit holder, we conclude that the regulation is within the constitutional police powers of the state, that it furthers a substantial governmental interest in discouraging the excessive consumption of alcoholic beverages which may reasonably be expected to flow from open advertising off the premises of drink prices and price advantages, that it is unrelated, proximately, to the suspension of free expression since it is directed toward the regulation of intoxicants and not speech, and that the infringement is no greater than necessary to the furtherance of that interest. *United States* v. *O'Brien* (1968), 391 U.S. 367. Appellee's contention that the instant regulation is violative of free speech is therefore without merit.

The assignments of error properly before this Court having been ruled upon as heretofore set forth, it is the Order of this Court that the judgment or final order herein appealed from be, and the same hereby is, reversed, and the matter is remanded to the Liquor Control Commission for the reinstatement of the order of suspension as originally ordered.

BLACK, P. J., PALMER and KLUSMEIER, J. J.

APPENDIX E

JOURNAL ENTRY OF THE COURT OF APPEALS FOR HAMILTON COUNTY, OHIO

COURT OF APPEALS
FIRST APPELLATE DISTRICT
HAMILTON COUNTY, OHIO

No. C-790901

QUEENSGATE INVESTMENT COMPANY, d.b.a. HOLIDAY INN,

Appellant-Appellee,

vs.

LIQUOR CONTROL COMMISSION,

Appellee-Appellant.

JUDGMENT ENTRY

(Entered February 25, 1981)

This cause came on to be heard upon the appeal on questions of law, assignments of error, the record from the Court of Common Pleas of Hamilton County, Ohio, the briefs and the arguments of counsel.

Upon consideration thereof, the Court finds that the

assignments of error are well taken for the reasons set forth in the Decision filed herein and made a part hereof.

It is, therefore, Ordered by the Court that the judgment of the Court of Common Pleas of Hamilton County, Ohio be, and the same hereby is, reversed, and the matter is remanded to the Liquor Control Commission for the reinstatement of the order of suspension as originally ordered.

It is further Ordered that a mandate be sent to the Court of Common Pleas of Hamilton County, Ohio, for execution upon this judgment.

Costs to be taxed in compliance with Rule 24, Appellate Rules.

And the Court being of the opinion that there were reasonable grounds for this appeal, allows no penalty.

It is further Ordered that a certified copy of this Judgment, with a copy of the Decision attached, shall constitute the mandate pursuant to Rule 27, Ohio Rules of Appellate Procedure.

To all of which the Appellant-Appellee, by its counsel, excepts.

[illegible]

APPENDIX F

JOURNAL ENTRY OF THE COURT OF COMMON PLEAS

CASE No. A-7903598

QUEENSGATE INVESTMENT COMPANY d/b/a Holiday Inn,

Appellant,

vs.

LIQUOR CONTROL COMMISSION,

Appellee.

ENTRY REVERSING AND VACATING ORDER OF LIQUOR CONTROL COMMISSION

(Entered November 14, 1979)

This case came on to be heard by the Court on the 29th of October, 1979 pursuant to the appeal of Queensgate Investment Company, d/b/a Holiday Inn, from an order of the Liquor Control Commission finding the said Appellant in violation of Regulation 4301:1-1-44 of the Commission relative to advertising. The Court has examined the transcript of the proceeding before the Liquor Control Commission and the evidence adduced at said hearing and is fully advised in the premises. The Court finds that the

order of the Commission finding the Appellant in violation of the aforesaid regulation and imposing a suspension on the Appellant's liquor permit is not supported by reliable, probative and substantial evidence and is not in accordance with law.

It is therefore ORDERED that the order of the Liquor Control Commission, State of Ohio, dated April 17, 1979, finding the Appellant in violation of its regulation 4301:1-1-44 and the suspension set forth in said order be and the same hereby is reversed, vacated and ordered set aside and held for naught.

It is further ORDERED that upon this order becoming final and no appeal having been filed on behalf of the Liquor Control Commission, the prior order of this court staying the suspension as ordered by the Liquor Control Commission shall be vacated and held for naught.

All exceptions are preserved to the Appellee.

/s/ GUSWEILER, J.,
Judge
Court of Common Pleas
Hamilton County, Ohio

Have Seen:

/s/ JAMES M. STERNER
Assistant Attorney General
Liquor Section
Attorney for Appellee
2323 West Fifth Avenue
Columbus, Ohio 43204

STRAUSS, TROY & RUEHLMANN CO., L.P.A.

BY /s/ SAMUEL M. ALLEN
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2100 Central Trust Center
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(513) 621-2120

APPENDIX G

ORDER OF THE LIQUOR CONTROL COMMISSION

BEFORE THE LIQUOR CONTROL COMMISSION
STATE OF OHIO

Case No. 1886-78
Appearance Docket No. 4336

IN THE MATTER OF:

The Permit Holder listed on
attached Notice of Hearing

ORDER

1. This cause came on for hearing this 29th day of Nov., 1978, regarding the Permit Holder and the alleged violation (s) contained in the attached "NOTICE OF HEARING", which is a part of this order.

2. The Permit Holder entered his plea of ( ) ADMISSION (X) DENIAL as to violation (s) 1, 2, 3. The Commission dismisses violation (s) — on motion of the Attorney General.

3. The Commission finds the Permit Holder in violation as to the violation (s) 1, 2, 3; and/or not in violation as to the violation (s) —.

4. The Commission orders subject permit (s) suspended

for a period of 7 day (s), said suspension beginning at noon, May 2, 1979, and ending at noon, May 9, 1979.

LIQUOR CONTROL COMMISSION
– STATE OF OHIO
219 S. High Street,
Columbus, Ohio 43215

/s/ DAVID L. KESSLER
Chairman
/s/ FLOYD C. MOON
Vice Chairman
/s/ DON WOODLAND
Member

( ) Concurrent with Case No. (s) .... Docket No. ....
( ) Consecutive with Case No. (s) .... Docket No. ....
( ) Immediate Imposition
(X) Counsel /s/ SAMUEL ALLEN
Mailed: 4-17-79

Case No. 1886-78
Docket No. 4336
Mailing Date 11/9/78

TO:

QUEENSGATE INVESTMENT CO.
Permit Holder
dba Holiday Inn
800 W. Eighth Street
Cincinnati, Ohio 45203 – Hamilton County
D-5A,6 10/1/78 7137983-0005
Permit (s)

Set for November 29, 1978 (Cont'd fr. November 8)
9:00 A.M., EST.
Hearing Date and Time

You are hereby notified that a hearing will be held before the Liquor Control Commission of the State of Ohio, 219 South High Street, Columbus, Ohio, at the date and time stated above, to determine whether your permit (s) should be suspended or revoked for alleged violations of the provision (s) of the Revised Code of Ohio and/or the regulation (s) of the Liquor Control Commission, to-wit:

Violation #1 – On August 14, 1978, your agent and/or employee, JEFF B. RUBY did advertise the retail price of alcoholic beverage in a circular off of permit premises, in violation of 4301:1-1-44, a regulation of the Ohio Liquor Control Commission.

Violation #2 – On August 14, 1978, your agent and/or employee, JEFF B. RUBY did advertise a price advantage for alcoholic beverage in a circular off of permit premises – in violation of 4301:1-1-44, a regulation of the Ohio Liquor Control Commission.

Violation #3 – On August 14, 1978, your agent and/or employee, JEFF B. RUBY did advertise in a circular off of permit premises, in violation of 4301:1-1-44, a regulation of the Ohio Liquor Control Commission.

Sub: Inv. Gene Brill #30

You may be present at said time and place, with or without counsel, and at said hearing may present evidence and examine witnesses appearing for or against you.

APPENDIX H

NOTICE OF APPEAL

IN THE SUPREME COURT OF OHIO

Case No. 81-633

QUEENSGATE INVESTMENT CO.,
d.b.a. HOLIDAY INN,

Appellant,

vs.

LIQUOR CONTROL COMMISSION,
STATE OF OHIO,

Appellee.

NOTICE OF APPEAL

(Filed March 18, 1982)

Queensgate Investment Co., d.b.a. Holiday Inn hereby appeals the judgment of the Supreme Court of Ohio entered February 24, 1982 insofar as it upheld the validity of Regulation 4301:1-1-44 of the Liquor Control Commission, State of Ohio, which was challenged by Appellant as being repugnant to the Constitution of the United

States. Appeal to the Supreme Court of the United States is taken pursuant to 28 U.S.C. § 1257 (2).

Respectfully submitted,

/s/ SAMUEL M. ALLEN
Attorney for Appellant Queensgate Investment Co., d.b.a. Holiday Inn
2100 Central Trust Center
Cincinnati, Ohio 45202
(513) 621-2120

OF COUNSEL:
Strauss, Troy & Ruehlmann Co., L.P.A.
2100 Central Trust Center
Cincinnati, Ohio 45202
(513) 621-2120

[CERTIFICATE OF SERVICE OMITTED]